

# Captive Newsletter

*A Newsletter from the Captive Practice Group*

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## SPECIAL EDITION

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### **NEW MEDICARE REPORTING REQUIREMENTS**

There has been much commentary in the insurance trade press over the last few weeks about the new Medicare reporting requirements for certain claims payors, including captives, risk retention groups and self-insurers, arising under the Medicare, Medicaid, and SCHIP Extension Act of 2007 (the "Act"), which we reported on in the April edition of our Captive Newsletter (Vol. 15, Issue 1). We are receiving many questions, and there is clearly some confusion about what is required.

There are two primary issues. The first is whether an entity is a Responsible Reporting Entity ("RRE") under the Act, and therefore required to register by September 30, 2009. Basically, an RRE is a party that pays medical claims that may also be subject to Medicare or Medicaid reimbursement. In captive structures, the RRE may be either the captive or the parent (or member), depending on how coverage is structured.

The second issue involves ongoing claims reporting requirements. At present, our understanding is that most Third-Party Administrators and some captive management companies will be prepared to assist with this process. Testing begins January 1, 2010 and concludes on March 31, 2010. Live claims data reporting will begin on April 1, 2010. Both the registration and reporting timelines have been extended since we published the April 2009 edition of our Captive Newsletter. The deadlines referenced above reflect the current, as extended, implementation timeline.

We are available to assist our captive clients (i) evaluate whether they face RRE registration requirements, and (ii) select service providers to act as reporting agents. However, the firm will not be involved in ongoing claims reporting.

Please contact Keith Jones in our Burlington office should you need assistance or have additional questions or concerns.

## **UPDATES TO CAPTIVE LAWS APPROVED BY LEGISLATURE**

The captive insurance industry, with the support of the Captive Division of the Vermont Department of Banking, Insurance, Securities and Health Care Administration, proposed several amendments to Vermont's captive laws during this year's recently concluded legislative session. The amendments, contained in Senate Bill 42 (S.42), were approved by the Legislature on May 5, 2009. We anticipate the Governor's signature soon, and the amendments will then be immediately effective.

Among the amendments are enhancements to the segregation of risks assumed by cells of a sponsored captive insurance company. Borrowing from revisions made last year for special purpose financial captives ("SPFCs"), the amendments also clarify the application of insurance insolvency laws to sponsored captive insurance companies. The amendments also protect the financial interests of any solvent cell despite the insolvency of other cells in the same program.

Reflecting the continued promotion of Vermont as a premier captive domicile, other amendments further facilitate the formation of captive insurance companies in this state. One offers a premium tax credit for new captives, one simplifies mergers with foreign captives, and another encourages existing captives to expand by limiting premium tax liability in certain circumstances. Finally, S.42 includes some technical amendments that will provide further flexibility in accounting methodology and the use of letters of credit.

Please contact us should you have any questions about this legislation and how it might impact your captive insurance program.

## **MOLLY LAMBERT'S LEGACY**

Vermont Senator Patrick Leahy has recommended Molly Lambert to the Obama administration for the position of the USDA's State Director of Rural Development for Vermont and New Hampshire. He could not have made a better decision. Molly previously served Vermont with distinction as Secretary of the Agency of Commerce and Community Development and as head of Burlington's famous Church Street Marketplace. However, it is as the President of the Vermont Captive Insurance Association ("VCIA") that Molly leaves her greatest legacy.

When Molly took over the VCIA, Vermont, as a domicile, was confronting the rigors of middle age. Others had emerged to challenge vigorously Vermont's position as the premier captive insurance domicile. And, the NAIC had resumed its efforts to regulate key parts of the alternative marketplace into oblivion, notwithstanding the fact that risk retention groups ("RRGs") had just played an enormous role in mitigating a severe medical liability insurance crisis (2002-2005). Even Congress got into the act as it considered expansion of the Liability Risk Retention Act so that property exposures could be covered by RRGs.

Molly's response to these and other challenging issues was singular. She recruited and retained Jim McIntyre to provide the VCIA membership with eyes and ears into the proceedings of Congress and the NAIC. She also

discerned the difficulty of busy executives travelling to Vermont and took the show on the road. Molly routinely showcased the best of Vermont's regulatory and service provider infrastructure to existing and potential captive operators throughout the United States. She also got under the hood on a number of complex legislative and regulatory matters, including the effort to permit securitization captives ("SPFCs") in Vermont. After a few short years, there are approximately twenty SPFCs operating in Vermont and generating, among other benefits, millions of dollars in annual premium tax revenues.

It has been an impressive run. Although we congratulate Senator Leahy on his

very wise decision, it is sad to see Molly move on. But, we won't be looking backward for long. As we have learned by her powerful example, Vermont knows what needs to be done in order to take its captive insurance industry to new heights.

Thank you, Molly!

#### **E-MAIL OPTION**

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